

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMENDED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17th day of January, two thousand and twelve.

PRESENT: JOSEPH M. McLAUGHLIN,
JOSÉ A. CABRANES,
RICHARD C. WESLEY,
Circuit Judges.

L.M., *

Defendant-Appellant,

-v.-

10-371-cr

UNITED STATES OF AMERICA,
Appellee.

FOR APPELLANT: ELIZABETH E. MACEDONIO, Bayside, New York.

* By a motion dated January 4, 2012, the appellant requested that any order of this Court with regard to this case appear under the caption "*L.M. v. United States*" and that the name of the appellant not be specified. The government has not opposed the motion. The motion is granted.

1 FOR APPELLEE: BURTON T. RYAN, Assistant United States
2 Attorney (David C. James, Assistant
3 United States Attorney, *on the brief*),
4 for Loretta E. Lynch, United States
5 Attorney for the Eastern District of New
6 York, Brooklyn, New York.
7

8 Appeal from the United States District Court for the
9 Eastern District of New York (Platt, J.).
10

11 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
12 **AND DECREED** that the judgment imposing an incarceratory
13 sentence of one year and one day is **VACATED**. We **REMAND** for
14 resentencing proceedings consistent with this order.

15 L.M. appeals from a judgement of the United States
16 District Court for the Eastern District of New York imposing
17 an incarceratory sentence of one year and one day. We
18 assume the parties' familiarity with the underlying facts,
19 the procedural history, and the issues presented for review.

20 **BACKGROUND**

21 The facts here are undisputed. L.M. began distributing
22 marijuana in the 1980s. He eventually came to the attention
23 of law enforcement, who executed a search warrant on his
24 home and confiscated ten pounds of marijuana.

25 That arrest was the genesis of a long and fruitful
26 cooperation with authorities. L.M. provided information
27 that led to the arrests and successful prosecutions of a

1 number of large-scale international drug dealers. In
2 addition, he recorded his conversations with various members
3 of drug distribution organizations and made himself
4 available as a trial witness. Because of his extensive
5 assistance to law enforcement, L.M. received a number of
6 credible threats of violence; to ensure his safety,
7 authorities installed a panic button in his home. As the
8 government conceded at oral argument, L.M. "uniquely earned"
9 the government's motion pursuant to Section 5K1.1 of the
10 United States Sentencing Guidelines urging a downward
11 departure.

12 Letters submitted on L.M.'s behalf, if credited, show
13 that his arrest also marked the beginning of an admirable
14 personal transformation. In the nearly *seventeen* years that
15 have elapsed since his arrest, he has built both a family
16 and a business. His wife of twenty-seven years describes
17 him as a devoted husband and a loving father to their four
18 children, and a colleague reports that L.M. is a widely-
19 respected and fair boss who dramatically reduced his own
20 salary in the economic downturn to avoid laying off
21 employees. Further, letters from L.M.'s father and sister
22 describe L.M. as a compassionate son and brother, a man who
23 cared for them through their long illnesses.

1 L.M. pleaded guilty to one count of conspiracy to
2 distribute marijuana and one count of filing a false tax
3 return. The suggested Guidelines range was forty-six to
4 fifty-seven months of incarceration. With little
5 explanation, the district court imposed an incarceratory
6 sentence of one year and one day. Two weeks later, L.M.
7 filed a motion for reconsideration, which the district court
8 denied. L.M. now appeals the district court's sentence as
9 procedurally and substantively unreasonable.

10 DISCUSSION

11 We review the sentence imposed by the district court to
12 ascertain whether it is reasonable. *Gall v. United States*,
13 552 U.S. 38, 46-47 (2007); *United States v. Cavera*, 550 F.3d
14 180, 187-88 (2d Cir. 2008) (*en banc*). Reasonableness review
15 is "akin to review for abuse of discretion." *United States*
16 *v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006). Our review
17 for reasonableness has both procedural and substantive
18 components. *See, e.g., Cavera*, 550 F.3d at 189.

19 L.M. first contends that his sentence is procedurally
20 unreasonable for two principal reasons: (1) the district
21 court did not properly consider the factors set forth in 18
22 U.S.C. § 3553(a) in fashioning its sentence; and (2) the
23 district court did not adequately explain its sentence as

1 mandated by 18 U.S.C. § 3553(c). We address only the second
2 argument here. A sentence is procedurally unreasonable if,
3 among other things, the lower court fails to adequately
4 explain the basis for the sentence it imposed. See, e.g.,
5 *United States v. Johnson*, 567 F.3d 40, 51 (2d Cir. 2009).
6 Requiring the district court to articulate the reasons for
7 its sentence (1) "helps to ensure that [it] actually
8 consider[s] the statutory factors and reach[es] [a] reasoned
9 decision[]"; (2) "promote[s] the perception of fair
10 sentencing"; and, most importantly, (3) assures "meaningful
11 appellate review." *Cavera*, 550 F.3d at 193 (internal
12 quotation marks omitted).

13 The district court did not adequately explain its
14 sentence. Particularly troubling, given the passage of
15 fifteen years between L.M.'s arrest and sentencing, is the
16 court's failure to discuss the extent to which it considered
17 evidence of L.M.'s rehabilitation in fashioning its
18 sentence. See *United States v. Hernandez*, 604 F.3d 48, 55
19 n.4 (2d Cir. 2010). Of course, the district court simply
20 might not have credited L.M.'s claims of rehabilitation, see
21 *United States v. Preacely*, 628 F.3d 72, 85 (2d Cir. 2010)
22 (Lynch, J., concurring), or it might have believed the
23 seriousness of L.M.'s crime outweighed even the most

1 compelling evidence of rehabilitation. However, given the
2 paucity of the district court's explanation, we cannot be
3 sure that the district court arrived at a reasoned decision
4 over which we can meaningfully exercise appellate review.
5 For this reason, we vacate the sentence imposed by the
6 district court as procedurally unreasonable.

7 Because we determine that the sentence imposed on L.M.
8 is procedurally unreasonable, we do not address the thorny
9 issue of whether, under the unique circumstances of this
10 case, an incarceratory sentence of one year and one day is
11 substantively unreasonable. On remand, the district court
12 shall have plenary authority to impose a sentence consistent
13 with law. We further elect to remand in accordance with the
14 procedures set forth in *United States v. Jacobson*, 15 F.3d
15 19, 22 (2d Cir. 1994). Either party may restore
16 jurisdiction to this Court to consider whatever arguments
17 remain or arise relating to L.M.'s resentencing by sending a
18 letter to the Clerk of the Court within 14 days of the
19 district court's decision. Any such proceedings will be
20 assigned to this panel.

21 After a thorough and searching review of the record, we
22 find L.M.'s remaining arguments to be meritless.

1 For the foregoing reasons, the judgment of the district
2 court imposing an incarceratory sentence of one year and one
3 day is hereby **VACATED**. We **REMAND** for resentencing
4 proceedings consistent with this order. The mandate shall
5 issue forthwith.

6
7 FOR THE COURT:
8 Catherine O'Hagan Wolfe, Clerk
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